COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 25, 2002

APPLICATION OF

BUCHANAN GENERATION, LLC CASE NO. PUE-2001-00657

For permission to construct
and operate an electrical
generating facility

FINAL ORDER

On November 13, 2001, Allegheny Energy Supply Company, LLC ("Allegheny Energy Supply"), a wholly owned subsidiary of Allegheny Energy, Inc., filed an application for a certificate of public convenience and necessity pursuant to § 56-265.2 of the Code of Virginia ("Code") to construct, own and operate electric generation facilities with a capacity of up to 88 MW, an associated 138 kV transmission line, and other associated facilities at a site located in Buchanan County, Virginia. On December 13, 2001, Allegheny Energy Supply filed an amended application and supplemental testimony of Thomas J. Irwin. The amended application seeks approval to construct, own and operate an electric transmission line necessary to interconnect the generation facilities to American Electric Power's ("AEP") Grassy Creek Substation.

By letter and additional testimony filed on February 4, 2002, Allegheny Energy Supply advised the Commission that together with CONSOL Energy, Inc. ("CONSOL"), it had concluded the formation of the special purpose entity known as Buchanan Generation, LLC ("Buchanan Generation" or "Applicant"), and that Buchanan Generation should henceforth be considered the Applicant.

Buchanan Generation is seeking Commission approval to construct, own, and operate an 88 MW simple cycle gas-fired generation facility. The project is to be constructed on a site owned by Consolidation Coal Company, a subsidiary of CONSOL; the site is the former location of a contour strip coal mining operation. The project will consist of two General Electric aeroderivative combustion turbines and associated auxiliary equipment. It will be fueled by coal-bed methane gas collected by Pocahontas Gathering Company, a wholly owned subsidiary of CONSOL, and sold to Buchanan Generation by Buchanan Production Company, a Virginia General Partnership. The project also will include a water treatment facility, a water line to interconnect the water treatment facility with the generation facilities, and a 138 kV transmission line that will be approximately 2.7 miles long.

On February 13, 2002, the Commission entered an order requiring the Applicant to provide public notice of its application, explaining that the Commission will treat the application as if filed under § 56-580 D of the Code, establishing a procedural schedule for the filing of testimony and exhibits, permitting any person or entity to file comments and/or a request for hearing, requiring the Commission Staff to file a report detailing its findings and recommendations, and appointing a Hearing Examiner to hear this case.

The Commission received no comments opposing the project and no requests for hearing. On March 28, 2002, Staff filed a report detailing its findings and recommendations in this matter. Staff found that the project satisfies all criteria contained in § 56-580 D of the Code and recommended that the Commission approve the proposed project. On May 2, 2002, the Hearing Examiner issued a ruling directing the Applicant to file supplemental information to support its project, including information on the environmental impact of this project and the cumulative impact of all proposed projects on the

existing air quality in Buchanan County and the surrounding area. On May 17, 2002, the Applicant filed supplemental information as directed.

On May 20, 2002, the Virginia Department of Environmental Quality ("DEQ") filed a letter advising the Commission that it had reviewed the cumulative impact analysis submitted by the Applicant. The DEQ explained that the analysis adequately addressed the predicted impact of the Buchanan Generation facilities and twenty-two (22) other proposed facilities on the air quality in Buchanan County and the surrounding area. The DEQ also submitted a summary of the predicted impact on ozone formation from the proposed project and fifteen (15) other projects existing or proposed in Virginia.

On June 11, 2002, Chief Hearing Examiner Deborah V. Ellenberg entered a Report in which the Examiner summarized the record, and reviewed and analyzed the evidence and issues in this proceeding. The Examiner's Report included the following findings:

(1) The proposed project will have no adverse impact on the reliability of the AEP electric system;

(2) The current level of air quality in Buchanan County is good, and is in attainment of all National Ambient Air Quality Standards ("NAAQS");

(3) The Applicant's cumulative impact analysis is reasonable;

(4) The cumulative impact analysis adequately demonstrates that the facility's emissions, when combined to include emissions from twenty-three (23) existing or proposed facilities, will have no material adverse effect on air quality in Buchanan County and the surrounding area;

(5) The DEQ's analysis shows that the impact on ground level ozone will not be significant in Buchanan County and the surrounding area;

(6) The facility's emissions will have no material effect on economic development in Buchanan County and the surrounding counties, because the analysis shows no significant deterioration of air quality and maintenance of levels well below the NAAQS;

(7) The facility will have no adverse effect on competition;

(8) The facility will have a positive effect on the local and regional economy; and

(9) The facility will have no adverse impact on the public interest.

The Examiner recommended that the Commission grant the Applicant authority and a certificate of public convenience and necessity pursuant to § 56-580 D of the Code to construct and operate the proposed 88 MW generation facility and associated facilities, including a 138 kV transmission line to interconnect the facility to the AEP system in Buchanan County. The Examiner also recommended that the Applicant be directed to comply with the recommendations of the DEQ. Finally, the Examiner recommended that the certificate be conditioned on the receipt of all permits necessary to operate the facility, and that the Applicant provide a complete list of the same to the Commission's Division of Energy Regulation.

On June 14, 2002, the Applicant filed a letter that, among other things: (1) stated the Applicant was pleased the Chief Hearing Examiner recommended issuance of the certificate; (2) stated the Applicant has no further comments on the Examiner's Report; (3) waived the comment period provided for in the Report; and (4) urged the Commission to act expeditiously to issue a certificate for this project. On June 14, 2002, Staff filed a letter stating that it has no comments on the Report and waiving the comment period provided for in the Report.

NOW THE COMMISSION, having considered the record, the pleadings, the Examiner's Report, and the applicable law, is of the opinion and finds as follows. As set forth in prior orders,[1] the Code of Virginia establishes six general criteria, or areas of analysis, that apply to electric generating plant applications. The six criteria are as follows: (1) reliability;[2] (2) competition;[3] (3) rates;[4] (4) environment;[5] (5) economic development;[6] and (6) public interest.[7] We have evaluated these six areas.

Pursuant to § 56-580 D, we find that the generating facility and associated facilities: (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility; and (ii) are not otherwise contrary to the public interest. In addition, we have evaluated the application pursuant to § 56-46.1 and have given consideration to the effect of the generating facility and associated facilities on the environment. We grant Buchanan Generation approval, and a certificate of public convenience and necessity, to construct and operate its proposed generating facility and associated facilities.

Accordingly, IT IS ORDERED THAT:

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[1] *See, e.g., Application of Tenaska Virginia Partners, LP, For approval of a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work*, Case No. PUE-2001-00039, Final Order (April 19, 2002).

[2] Va. Code Ann. §§ 56-580 D(i) and 56-46.1 A.

3 Va. Code Ann. § 56-596 A.

4 Va. Code Ann. §§ 56-580 D(ii); 20 VAC 5-302-20 14. See also Ex Parte: In the matter of amending filing requirements for applications to construct and operate electric generating facilities, Case Nos. PUE-2001-00313 and PUE-2001-00665, Order Adopting Rules and Prescribing Additional Notice at 6 (Dec. 14, 2001).

5 Va. Code Ann. §§ 56-580 D and 56-46.1 A.

6 Va. Code Ann. §§ 56-46.1 and 56-596 A.

[7] Va. Code Ann. §§ 56-580 D(ii).

(1) The findings in the Hearing Examiner's Report of June 11, 2002, are hereby adopted.

(2) Pursuant to § 56-580 D of the Code of Virginia, Buchanan Generation is hereby granted authority, and a certificate of public convenience and necessity, to construct and operate the 88 MW electric generating facility and associated facilities in Buchanan County, Virginia, as described in this proceeding.

(3) The certificate of public convenience and necessity granted herein shall be conditioned upon the receipt of all environmental and other permits necessary to operate the facilities.

(4) The Applicant shall comply with the recommendations of the DEQ.

(5) There being nothing further to come before the Commission in this proceeding, this case shall be removed from the docket and the papers transferred to the file for ended causes.

MOORE, Commissioner, Dissents:

I respectfully dissent from my colleagues' decision to approve the construction and operation of the Buchanan generation facility based on the record before us. My disagreement is limited to the majority's conclusions with respect to air quality.

In this proceeding, the Hearing Examiner specifically directed the Applicant to supplement its application to address the cumulative air impact issue. The Applicant filed additional information, and the DEQ submitted a letter stating that it had reviewed the cumulative impact analysis submitted by the Applicant, and that the analysis adequately addressed the predicted impacts of the proposed facility and 22 other proposed and existing generating units. The DEQ also provided a summary of the predicted impact on ozone formation from the proposed project and fifteen other proposed and existing plants in Virginia.

After reviewing the material submitted, the Hearing Examiner recommended that a certificate to construct and operate the 88 MW unit be granted. Based on the decision of my two colleagues in the *Tenaska* case,[1] I understand why she might make such a recommendation.

This case suffers from many of the same failings as those of the *Tenaska* case. Additionally, the Applicant here failed to provide data in several areas where such data were provided in the *Tenaska* proceeding. Simply because the proposed plant is smaller than the Tenaska facility does not mean that the examination should not be complete and thorough. An 88 MW unit is significant and the air pollution it will add must not be ignored.

In our *Tenaska* order of January 16, 2002, remanding that case,[2] the Commission explained that it must have data showing both the current quality of the air in the area impacted by the proposed

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[1] *Application of Tenaska Virginia Partners, L.P., For approval of a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work*, Final Order, Doc. No. 271123 (Apr. 19, 2002) ("Final Order") (Commissioner Moore dissenting).

[2] *Application of Tenaska Virginia Partners, L.P., For approval of a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work*, Case No. PUE-2001-00039, Doc. Con. Cen. No. 020120072 (Jan. 16, 2002).

facility and the impact on that air quality of the proposed and other facilities. In the *Tenaska* case, the applicant provided data reflecting the current air quality in the area surrounding the facility and the impact of that facility and 22 others on that air quality. These data were provided for the following pollutant standards: NO_2 annual, PM_{10} annual, PM_{10} 24-hour, SO_2 annual, SO_2 24-hour, SO_2 three-hour, CO eight-hour, CO one-hour, and O_3 one-hour.[3]

As noted in my dissent in the Final Order in the *Tenaska* case, the analysis of the majority failed for several reasons. First, for several pollutants, the data showed, without explanation, that the current air quality was relatively close to the EPA's National Ambient Air Quality Standards ("NAAQS"), and that the facilities would add significantly to those levels. Specifically, the current PM_{10} levels were more than 50% of the NAAQS, and the cumulative impact would increase the current concentration levels under the 24-hour PM_{10} analysis by almost 10%.[4] With respect to ozone, the current level presented by the applicant for the impacted area was almost 90% of the one-hour ozone level of 120 ppb, and this level would be pushed even closer to the NAAQS by the proposed facilities.[5]

In this proceeding, the Applicant has provided background, plant specific, and cumulative data for the PM_{10} 24-hour, the PM_{10} annual, and the NO_2 annual standards. The Applicant also provided background and plant specific data with respect to the following standards: SO_2 annual, SO_2 24-hour, SO_2 three-hour, CO eight-hour, and CO one-hour. However, no cumulative impact data were provided for SO_2 and CO. For ozone, the DEQ indicated what the effect of the pollutants might be for the impacted area, but current ozone levels for the area were not provided. The Applicant apparently concluded that further analyses were not necessary with respect to SO_2 or CO.[6]

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[3] In support of its environmental analysis, Tenaska filed a study prepared by the Trinity Consultants entitled "Cumulative Impacts Analysis--Tenaska Virginia Generation Station" ("Trinity Report"). This study was included as Exhibit 3 to the direct remand testimony (marked at the hearing as Exhibit 16) of Tenaska's environmental witness, Dr. Greg Kunkel. A chart summarizing the pollutants that were included in the cumulative impact analysis is contained in the Trinity Report, Tables 1-3 and 1-4 at pp. 1-9, 1-10.

[4] Final Order, Commissioner Moore's dissent ("Moore Dissent"), 4.

[5] Moore Dissent, 5.

[6] Report of Deborah V. Ellenberg, Chief Hearing Examiner, Case No. PUE-2001-00657, Doc. No. 275567 (June 11, 2002), 10-13.

Where background, plant specific, and cumulative data were presented in this case, current pollution concentration levels do not appear to be approaching the NAAQS, and neither the proposed facility alone nor all 23 proposed facilities together would add greatly to those levels in the area of the facility proposed in this case. Unfortunately, data for additional cumulative impact analyses -- data that were presented in *Tenaska* -- were not provided here. Generalities should not be allowed to replace data and information. In this regard, this case falls short of what was presented in *Tenaska.*

Of equal importance is the failure of the Applicant to present data or to address the EPA's $PM_{2.5}$ and eight-hour ozone standards. As discussed in some detail in my dissent in *Tenaska,* the ozone and particulate matter standards were updated by the EPA in 1997 because there were very serious health problems related to fine particulate matter and ozone where the PM_{10} and one-hour ozone standards were being met. Moreover, the EPA concluded that there was no safe level for fine particulate matter or ozone.[7] In *Tenaska* and here, it appears that the majority has concluded that as long as pollution levels do not exceed the NAAQS, the environment and the citizens of the Commonwealth are safe. As the EPA explained, however, no level of fine particulate matter or ozone is safe, so the current levels, and any increase to these levels, are significant data that need to be considered.

Here, as in *Tenaska,* the Applicant failed to address the revised standards. While these standards are not yet being enforced, the reality of the harm caused to humans, animals, and plants by these pollutants has been and remains real. This is particularly disturbing in light of data related to these revised standards that appear on the DEQ's Internet site. Specifically, Virginia data for eight-hour ozone exceedences for 1990 through 2000 are set forth in charts, along with the exceedences under the one-hour standard for the period 1987 through 2000.[8] Data under both standards for a representative

[7] *See* Moore Dissent, 6-8, 9-10.

[8] *See* http://www.deq.state.va.us/ozone/ozone-t3.html for the chart "Eight-hour ozone exceedences (1990-2001)" and http://www.deq.state.va.us/ozone/ozone-t2.html for the chart "One-hour ozone exceedences (1987-2001)."

area should have been presented and explained here, but they were not.[9] The DEQ data highlight the need for such information, analysis, and explanation. While it has been generally understood that changing from the one-hour 120 ppb standard to the eight-hour 80 ppb standard would almost certainly increase the number of times the ozone standard would be exceeded in Virginia, the DEQ data may give an idea of the scale of the increase.[10] On a statewide basis, the number of exceedences in Virginia under the one-hour 124 ppb standard total 50 for the five years from 1996 through 2000; using the eight-hour 84 ppb standard for the same period shows 783 exceedences.[11] When we know the ozone standard was tightened to protect the public health and see this indication of possible extraordinary increases in exceedences as a result of the application of the revised standard, the people of the Commonwealth are entitled to the eight-hour data and an explanation. With respect to $PM_{2.5}$, it appears that some data may also be available.[12] Given the increasing health concerns related to $PM_{2.5}$, citizens, again, are entitled to the data that are available and to an explanation.

The sad part about this proceeding is that it may be that the proposed facility should be built. Adequate data and analysis, however, have not been provided, and Virginia government is ignoring that fact. As a result, the environment of the Commonwealth and the health of her citizens may be at risk. This should not, and need not, be the case. It is reassuring that, under new legislation effective July 1, the DEQ will be evaluating the environmental impacts of proposed power plants thoroughly.

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[9] If such data were not needed, an explanation and a rationale of why appropriate data were not available or not needed should have been provided.

[10] The DEQ's ozone standards are based on the NAAQS developed by the EPA. Due to the two agencies' differing methodologies and interpretation, the numbers of the standards vary slightly by agency. The EPA current one-hour ozone standard is 0.12 ppm (or 120 ppb), where the DEQ's one-hour standard is 124 ppb. The EPA's eight-hour ozone standard is 0.08 ppm (or 80 ppb), where the DEQ's eight-hour standard is 84 ppb. For further information concerning the EPA's ozone standards, see http://www.epa.gov/ttn/oarpg/naaqsfin/o3fact.html.

[11] *See supra* note 8.

[12] *See* http://www.deq.state.va.us/airmon/pm25home.html to find links to charts presenting summary and annual summary data for $PM_{2.5}$.